IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 652 OF 1987

The State of Maharashtra.).. Appellant

Vs.

Tahira Suleman Sayyed,)
age about 40 years, Occupation - Nil,)
residing at 54, G.P.81,)
Lohiyanagar Zopadpatti, Pune.).. Respondent

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Shri D.S.Mhaispurkar, APP for the appellant.

None for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 17th February, 2005.

ORAL JUDGMENT : (Per P.V.Kakade, J)

1. The State has preferred this appeal against the judgment and order passed by the learned Additional Sessions Judge, Pune, dated 7th May, 1987 acquitting the accused person, who was involved in committing the offence punishable under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"), and under Section 66(1)(b) of the Bombay Prohibition Act.

2. The prosecution case in brief is as under:

. On 6th September, 1986, when P.W.1 Duryodhan Konde and the other police officers were present at Khadak Police Station, the information was received that in Lohiyanagar Zopadpatti, one lady by name Tahira was dealing in Ganja and therefore, two persons were called to act as panchas. The Police Inspector Kulkarni from the said Police Station was informed about the said information and as per his direction, P.W.1- PSI Konde along with the two panchas and the other members of the raiding party went to Lohiyanagar Zopadpatti at about 12.30 noon. Near about Darwesh Provisional Stores, they noticed that the accused was sitting in front of the said Darwesh Provisional Stores. There was one plastic bag kept in her front. She was accosted. The search of the plastic bag was taken and it was noticed that there were 25 packets of Ganja. The Ganja from all the packets was wrapped in one paper and its weight was taken. The packet was sealed and the lable of the signatures of the pachas was affixed thereto. Upon search, an amount of Rs.5/- was found on her person, which was also seized under the said panchanama.

. Thereafter, the raiding police party including PSI Konde (P.W.1) and the panchas returned to the police station with the accused and the muddemal packets which were seized from the spot and the accused person was put under arrest under the panchanama. The complaint was filed by P.W.1 -PSI Konde, which was duly registered and the investigation was commenced in which course, the statements of the witnesses were recorded and the attached muddemal property was sent to the Chemical Analyser for examination, whose report was received in due course, which is on record and on completion of the investigation, charge-sheet was lodged in the Court of law.

3. The learned Judge framed the charge against the accused for commission of the offence to which the accused pleaded not guilty. The defence of the accused was totally that of denial of any criminal liability. The prosecution led its evidence on which basis, the trial Judge came to the conclusion that the evidence of the prosecution is not sufficient to show that the accused, who is a lady, was in possession of narcotic contrabands at the relevant time and place, and therefore, she was given benefit of doubt and was acquitted of the offence registered against her.

Hence the appeal.

4. We have heard the learned APP. None present for the respondent.

. At the outset, it may be noted that though the prosecution case rested on the evidence of the two panchas, the panch witness turned hostile, and therefore, his evidence was discarded from consideration. We have perused the evidence of P.W.2 and have satisfied that no substantial material evidence could be extracted from his testimony and his very presence seems to be doubtful at the relevant time and place, and therefore, we hold that the trial Judge has rightly discarded the evidence of P.W.2-panch witness.

. This takes us to the testimony of PSI Konde (P.W.1), who was heading the raiding party. On perusal of his evidence, it is clear that, on the information, he went to the spot and saw that the accused was sitting in front of the said place where one plastic bag containing Ganja was found. Therefore, the entire evidence of P.W.1 PSI Konde shows that the packet which was found was not on the

person of the accused but it was found in front of her, and therefore, in the circumstances, even assuming that the muddemal packet was found in front of the accused person, she cannot be held liable for possession of Ganja. In other words, the contrabands attached from the place cannot be linked with the accused for want of cogent and conclusive evidence, and therefore, under such circumstances, it would not be safe to rely on the evidence of P.W.1 PSI Konde.

5. The learned trial Judge has rightly discarded the evidence of P.W.1 PSI Konde from consideration for want of sufficient and corroborative evidence as well as substantial link between the appellant and the contrabands seized while coming to the conclusion of acquittal of the appellant-accused.

6. For the reasons recorded above, we find no merit in the Appeal, and therefore, the same stands dismissed.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)